

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 421

Introduced by Senator Hancock

February 25, 2015

An act to amend Section 7873 of the Labor Code, relating to refineries.

LEGISLATIVE COUNSEL'S DIGEST

SB 421, as amended, Hancock. Refineries: turnarounds.

Existing law requires a petroleum refinery employer to, every September 15, submit to the Division of Occupational Safety and Health information regarding planned turnarounds, as defined, for the following calendar year and provide onsite access to the division for inspection. Existing law establishes procedures for the public disclosure of turnaround information designated a trade secret, including authorization for a petroleum refinery employer to seek a declaratory judgment to prevent disclosure. Existing law requires a court to award attorney's fees to a party that prevails in an action to compel or prohibit the division from disclosing turnaround information.

~~This bill would state the intent of the Legislature to enact legislation that would clarify the above-described process for public disclosure of trade secret information, and ensure that a petroleum refinery employer is not authorized to collect attorney's fees from individuals or organizations seeking those records.~~

This bill would delete the requirement that the court award attorney's fees.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 **SECTION 1.** *Section 7873 of the Labor Code is amended to*
2 *read:*

3 7873. (a) As used in this section, “trade secret” means a trade
4 secret as defined in subdivision (d) of Section 6254.7 of the
5 Government Code or Section 1061 of the Evidence Code, and shall
6 include the schedule submitted to the division pursuant to
7 subdivision (b) of Section 7872 of this code, and the scheduling,
8 duration, layout, configuration, and type of work to be performed
9 during a turnaround. Upon completion of a turnaround, the
10 scheduling and duration of that turnaround shall no longer be
11 considered a trade secret. The wages, hours, benefits, job
12 classifications, and training standards for employees performing
13 work for petroleum refinery employers is not a trade secret.

14 (b) (1) If a petroleum refinery employer believes that
15 information submitted to the division pursuant to Section 7872
16 may involve the release of a trade secret, the petroleum refinery
17 employer shall nevertheless provide this information to the
18 division. The petroleum refinery employer may, at the time of
19 submission, identify all or a portion of the information submitted
20 to the division as trade secret and, to the extent feasible, segregate
21 records designated as trade secret from the other records.

22 (2) Subject to subdivisions (c), (d), and (e), the division shall
23 not release to the public any information designated as a trade
24 secret by the petroleum refinery employer pursuant to paragraph
25 (1).

26 (c) (1) Upon the receipt of a request for the release of
27 information to the public that includes information that the
28 petroleum refinery employer has notified the division is a trade
29 secret pursuant to paragraph (1) of subdivision (b), the division
30 shall notify the petroleum refinery employer in writing of the
31 request by certified mail, return receipt requested.

32 (2) The division shall release the requested information to the
33 public, unless both of the following occur:

34 (A) Within 30 days of receipt of the notice of the request for
35 information, the refinery petroleum employer files an action in an
36 appropriate court for a declaratory judgment that the information
37 is subject to protection under subdivision ~~(b)~~ (a) and promptly
38 notifies the division of that action.

1 (B) Within 120 days of receipt of the notice of the request for
2 information, the refinery petroleum employer obtains an order
3 prohibiting disclosure of the information to the public and promptly
4 notifies the division of that action.

5 (3) This subdivision shall not be construed to allow a petroleum
6 refinery employer to refuse to disclose the information required
7 pursuant to this section to the division.

8 (d) (1) Except as provided in subdivision (c), any information
9 that has been designated as a trade secret by a petroleum refinery
10 employer shall not be released to any member of the public, except
11 that such information may be disclosed to other officers or
12 employees of the division when relevant in any proceeding of the
13 division.

14 (2) If the person requesting the release of the information or the
15 petroleum refinery employer files an action to order or prohibit
16 disclosure of trade secret information, the person instituting the
17 proceeding shall name the person or the petroleum refinery
18 employer as a real party in interest.

19 (A) The petroleum refinery employer filing an action pursuant
20 to paragraph (2) of subdivision (c) shall provide notice of the action
21 to the person requesting the release of the information at the same
22 time that the defendant in the action is served.

23 (B) The person filing an action to compel the release of
24 information that includes information that the petroleum refinery
25 employer has notified the division is a trade secret pursuant to
26 paragraph (1) of subdivision (b) shall provide notice of the action
27 to the petroleum refinery employer that submitted the information
28 at the same time that the defendant in the action is served.

29 ~~(3) The court shall award costs and reasonable attorneys' fees~~
30 ~~to the party that prevails in litigation filed pursuant to this section.~~
31 The public agency shall not bear the court costs for any party
32 named in litigation filed pursuant to this section.

33 (e) This section shall not be construed to prohibit the exchange
34 of trade secrets between local, state, or federal public agencies or
35 state officials when those trade secrets are relevant and reasonably
36 necessary to the exercise of their authority.

37 (f) An officer or employee of the division who, by virtue of that
38 employment or official position, has possession of, or has access
39 to, trade secret information, and who, knowing that disclosure of
40 the information to the general public is prohibited by this section,

1 knowingly and willfully discloses the information in any manner
2 to a person he or she knows is not entitled to receive it, is guilty
3 of a misdemeanor. A contractor with the division and an employee
4 of the contractor, who has been furnished information as authorized
5 by this section, shall be considered an employee of the division
6 for purposes of this section.

7 ~~SECTION 1.—It is the intent of the Legislature to enact~~
8 ~~legislation that would clarify the public disclosure process for~~
9 ~~petroleum refinery turnaround information required to be given to~~
10 ~~the Division of Occupational Safety and Health, and would ensure~~
11 ~~that this process does not authorize a petroleum refinery employer~~
12 ~~to collect attorney's fees from individuals or organizations seeking~~
13 ~~those records.~~